

Housing Matters: A Fair Housing Legal Update

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Our Focus

- Review **case law** involving housing discrimination against persons with disabilities
 - **Private litigation** in Indiana
 - Indiana Civil Rights Commission (ICRC)
- **Probable Cause Findings**
- Within the **last 3 years**
- To better understand **disability discrimination** under the Fair Housing Act



A.B. ex rel. Kehoe v. Housing Authority of South Bend

- **U.S. District Court, N.D. Indiana**
- May 18, 2012
- Allegation of **wrongful eviction** from public housing owned by HASB



***A.B. ex rel. Kehoe v. Housing
Authority of South Bend***

- Arrested near residence, charged with **possession of cocaine**
- Few weeks later, HASB sent "**Notice to Terminate Lease**"
 - Terminated because of possession arrest
 - HASB "**One Strike**" policy
 - Using/possessing near complex = eviction



***A.B. ex rel. Kehoe v. Housing
Authority of South Bend***

- Later **pled guilty**
- Plea included Drug Court program
 - If completed program, stayed clean, can withdraw guilty plea and state would dismiss charge
- 10 days later, minor son filed action
 - Court as confused as everyone why the son instead of mother



***A.B. ex rel. Kehoe v. Housing
Authority of South Bend***

- Argued that HASB **regarded or treated** mother as a drug abuser
 - Even though she does not use drugs and successfully completed drug rehab program
- Argued **failure to modify policy** for drug addiction disability was discriminatory – ADA/FHA



***A.B. ex rel. Kehoe v. Housing
Authority of South Bend***

- Son alleged that mother was a **qualified individual that was regarded and treated** as a current drug user and a person with a history of drug use
- Complaint: "she made a 'mistake' on one occasion in 2011 and **had taken an illegal drug.**"
 - Court: fatal admission



***A.B. ex rel. Kehoe v. Housing
Authority of South Bend***

- Court: Current drug users **not entitled** to protection under FHA/ADA
- **Exception in definition** of "handicap"
 - "...but such term does not include current, illegal use of or addiction to a controlled substance." 42 U.S.C. § 3602(h)
- **"Perfectly permissible** for an entity...to take an adverse action against someone who is caught using drugs."



***A.B. ex rel. Kehoe v. Housing
Authority of South Bend, Indiana***

- **U.S. Court of Appeals, 7th Circuit**
- December 20, 2012
- Argued that District court erroneously concluded that mother was a "current drug user" when Housing Authority sent eviction notice



***A.B. ex rel. Kehoe v. Housing
Authority of South Bend, Indiana***

- Court: Although eventually entered a rehab program, **was still a "current drug user"** when eviction notice sent
 - Three weeks before she entered rehab
- Reasonable belief that her drug abuse was ongoing at the time of Notice
 - Therefore **not considered "disabled"** under FHA/ADA



***Balovski v. Everett
Management Corp***

- **U.S. District Court, N.D. Indiana**
- July 8, 2014 - filed
- Issue:
 - Reasonable accommodation denial



***Balovski v. Everett
Management Corp***

- Year-to-year lease, starting July 2007
- Physical disability; used crutches
- **8/3/11, 9/2/11** – Too few parking spots close to unit; talked to defendant
 - Response: **No time to talk**
- **9/12/11** – Asked office manager for more accessible parking spaces
 - Response: Too many residents need them, ask someone to **"leave you a spot"**



***Balovski v. Everett
Management Corp***

- **9/12/11** – Asked for assigned parking space instead
 - Response: **No** – won't do it.
- **10/24/11** – Voiced concerns to maintenance manager
 - Response: **No**, not going to provide assigned
 - Recorded response; "O.J.'s law firm"
- **5/25/12** – Notice lease not renewed; vacate by **7/31/12**



***Balovski v. Everett
Management Corp***

- **6/12-6/14/12** – Parking lot repaved
- **6/14/12** – Again asked maintenance manager about request
 - Response: **Laughed, no.**
- **7/29/12** – Vacated and returned keys
 - Unable to obtain housing elsewhere
- **3/4/14** - Filed in federal court



***Balovski v. Everett
Management Corp***

- **Settlement:**
 - Defendants agreed to pay plaintiff monetary damages (including attorney's fees)



Buckingham Realty and Development Corp.

- **U.S. District Court, S.D. Indiana**
- December 7, 2012 – filed
- Design and Construction



Buckingham Realty and Development Corp.

- National Fair Housing Alliance, Fair Housing Center of Central Indiana, HOPE Fair Housing Center (Wheaton, IL)
- **KY, IL, IN** complexes
 - Providence at Old Meridian Apartments (Carmel, IN)
 - The Reserve at Williams Glen Apartments (Zionsville, IN)



Buckingham Realty and Development Corp.

- Claim
 - **Continuous pattern or practice of discrimination**
 - Designing and/or constructing multifamily dwellings, and common- and public-use areas, **without required accessibility features**



Buckingham Realty and Development Corp.

- Claim (cont'd)
 - Curbs without curb cuts; excessive running slopes; doors too narrow; primary entry doors handles that require tight grasping and twisting; no required access aisles with accessible parking; inaccessible routes to public- and common-use areas; **etc.**



Buckingham Realty and Development Corp.

- **Settlement**
 - Defendants agreed to **make necessary modifications** at the four complexes to comply with D&C accessibility requirements
 - **Monetary payment** to the fair housing centers



Diane Craig

- **ICRC No. HOHA15050326**
- October 6, 2015
- Issue:
 - 1) Pit bull as an emotional support animal



Diane Craig

- Complainant inquired about a four-bedroom home for rent
- Respondent asked if she had pets; Complainant answered yes - a dog
- Respondent - **"I don't take dogs"**



Diane Craig

- Next day, Respondent called and asked what breed of dog
- Complainant said **pit bull**, as an **emotional support animal**
- Respondent - "afraid of pit bulls," "would not be safe"



Diane Craig

- ICRC: Respondent ultimately **denied Complainant's RA request**, depriving Complainant of opportunity to rent
 - Respondent admitted Complainant informed her dog was an "emotional support animal"
 - Complainant had **medical documentation** - dog "provides significant emotional support"



Diane Craig

- ICRC: "General fear of pit bulls does not absolve her of the obligation to provide a reasonable accommodation necessary to allow Complainant to **enjoy full access and enjoyment** of the home in question."
- **Reasonable cause** exists to believe that a discriminatory practice occurred as alleged



Gene B. Glick Company & Brookview Apartments

- **ICRC No. HOHA15010034**
- August 10, 2015
- Two issues:
 - 1) Lease renewal refusal because of disability?
 - 2) Request for reasonable accommodation?



Gene B. Glick Company & Brookview Apartments

- Complainant signed one-year lease
- Lease provided that residents shall comply with all reasonable rules and/or regulations
- Complainant **violated numerous terms**:
 - Removing landscaping including soil and rocks,
 - Impersonating staff member while inspecting another resident's apartment, and
 - Refusing to allow pest control personnel to enter her unit after requesting their services



Gene B. Glick Company & Brookview Apartments

- Repeated warnings regarding violations and requesting compliance
- Ultimately sent **non-renewal notice**
 - Due to numerous lease violations



Gene B. Glick Company & Brookview Apartments

- Issue #1:
 - Complainant: non-renewal due to disability
 - ICRC: Complainant failed to comply with reasonable terms and conditions on numerous occasions in violation of lease
 - **No reasonable cause**



Gene B. Glick Company & Brookview Apartments

- After non-renewal notice, Complainant requested an **accommodation**
 - Six-month renewal of her lease
 - Possibility of future renewals if she was able to control outbursts during initial six-month period



Gene B. Glick Company & Brookview Apartments

- Submitted **doctor's statement**:
 - "Due to mental health problems, she has very poor coping skills and often reacts inappropriately to others"
 - "Please excuse this behavior as she has been in and out of mental health treatment for years ... We are currently in the process of getting her reestablished with a mental health therapist."



Gene B. Glick Company & Brookview Apartments

- Attorney submitted following info:
 - "[Complainant] is reconnecting with mental health experts for treatment and therapy so that she can better address the issues that led to a decision not to renew her lease."
- Respondent **denied request**
 - No nexus between theft of landscape items and impersonating property staff with her conditions
 - Permitted an **extra month** instead



Gene B. Glick Company & Brookview Apartments

- Issue #2:
 - ICRC: Medical evidence that **nexus** between behaviors and Complainant's disability existed
 - Alternative accommodation **insufficient**
 - No evidence that six-month renewal period, contingent upon Complainant improving her behavior, was unreasonable
 - **Reasonable cause**



Bluffton Properties, LLC/ Maple Grove Trailer Park

- **ICRC No. HOHA15010033**
- May 19, 2015
- Two issues:
 - 1) Denial to rent based on grandson's disability?
 - 2) Request for a reasonable accommodation?



Bluffton Properties, LLC/ Maple Grove Trailer Park

- Issue #1:
 - Complainant applied to rent a two-bedroom apartment from Respondent
 - Respondent policy to **run background and credit checks** on all applicants
 - 3 disorderly conduct convictions, 1 criminal damaging conviction, at least 10 passing bad check convictions, several convictions related to the failure to confine a dog, and at least one recent eviction



Bluffton Properties, LLC/ Maple Grove Trailer Park

- Issue #1: (cont'd)
 - At time of application, Complainant asked for reasonable accommodation for grandson's disability
 - Respondent **denied application**
 - Complainant – denial because of grandson's disability



Bluffton Properties, LLC/ Maple Grove Trailer Park

- Issue #1: (cont'd)
 - ICRC = Insufficient evidence to show denial of rent was related to grandson's disability
 - **Complainant was unqualified** to rent from Respondent in a manner consistent with reasonable terms and conditions
 - **No reasonable cause**



Bluffton Properties, LLC/ Maple Grove Trailer Park

- Issue #2:
 - During application process, Complainant told Respondent that grandson used **service dog** (German Shepherd) and provided doctor's statement



Bluffton Properties, LLC/ Maple Grove Trailer Park

- Issue #2 (cont'd):
 - Respondent – documentation **insufficient** to establish that dog was a "service dog"
 - Said documentation called dog "emotional support animal," not "service dog"
 - Told her she needed to "register the dog as a service animal"



Bluffton Properties, LLC/ Maple Grove Trailer Park

- Issue #2: (cont'd)
 - ICRC: Emotional support animals are **not required** to be “registered”
 - Request to have animal registered = violation
 - Additionally, doctor’s statement established a clear **nexus** between grandson’s disability and requested accommodation
 - **Reasonable cause**



Troy Manor Cooperation, Inc.

- **ICRC No. HOHA14120942**
- April 30, 2015
- Two issues:
 - Individual with a disability?
 - Request for a reasonable accommodation?



Troy Manor Cooperation, Inc.

- Complainants lived in co-op community for **25 years**
- Participants in **Section 8** Housing Choice Voucher program
- 2009 - Complainant sustained head injury, affected his mobility/balance
- Family receives SSI income



Troy Manor Cooperation, Inc.

- Recertification policy for Section 8
 - Submit to annual housing inspections + income verifications
 - If **fail two inspections** within 12 months, subject to **final warning** before eviction
 - Fail inspection **while on final warning** = 30-day **notice to vacate/eviction**



Troy Manor Cooperation, Inc.

- Complainants compliant for 20+ years
- April 2014 - Respondent became aware of **pest control issues** in unit
 - 1st failed inspection
- June 2014 – Failed to correct situation
 - 2nd failed inspection, **final warning**
- July 2014 – Problem continued
 - 3rd failed inspection, **30-day notice to vacate**



Troy Manor Cooperation, Inc.

- September 2014 – Notwithstanding July 2014 notice to vacate, notice given for a September inspection
 - **Passed inspection!**
 - Respondent still continued eviction process
- October 2014 – Written request for **reasonable accommodation**
 - Allow them to stay, will utilize cleaning service to maintain unit
 - Alternatively, more time to vacate (due to disabilities)



Troy Manor Cooperation, Inc.

- ICRC: Respondents failed to engage in **interactive dialogue** process after receiving request
 - Respondent simply continued eviction process
- Respondent argued not person with disability; no FH protections
 - ICRC: Evident suffered from a disability because Complainant **received SSI income**
- Failure to engage in the interactive dialogue process = violation
- **Reasonable cause**



Debra Wernke/ Hunter's Ridge Apartments

- **ICRC No. HOHA14090718**
- February 4, 2015
- Two issues:
 - 1) Discriminatory terms and conditions?
 - 2) Reasonable accommodation denial?



Debra Wernke/ Hunter's Ridge Apartments

- Issue #1
 - **Pet-free** community
 - Complainant (visual/mobility) submitted application, was approved
 - Came to office to sign, obtain keys; **brought service animal**
 - Respondent didn't know Complainant used service animal; asked how he was going to clean up after animal



Debra Wernke/ Hunter's Ridge Apartments

- Issue #1 (cont'd)
 - Complainant said couldn't clean up, due to disability
 - Respondent said, "maybe you'd be able to smell it."
 - Letter to Complainant – apartment would be held for one week so he could **"arrange to be trained or receive training for cleaning up after his service animal."**



Debra Wernke/ Hunter's Ridge Apartments

- Issue #1 (cont'd)
 - ICRC: Yes, Complainant has responsibility to clean up and care for his service animal
 - **However**, no evidence to show that routinely required other tenants to receive training before renting from Respondent
 - **Reasonable cause**



Debra Wernke/ Hunter's Ridge Apartments

- Issue #2
 - ICRC: Once Complainant informed Respondent that he was unable to pick up after the service animal, Respondent sent letter instead of **engaging in interactive dialogue** process
 - Did not discuss alternatives that would allow Complainant to reside in apartment
 - **Reasonable cause**



Roy Hanover

- **ICRC No. HOHA14100761**
- January 16, 2015
- Two issues:
 - 1) Rental denial due to son's disability?
 - 2) Discriminatory statements regarding preference for applicants without children with disabilities?



Roy Hanover

- Issue #1
 - Complainant searching for residence for herself, boyfriend and three children
 - **One child has disability**
 - Complainant received monthly disability income and child support in amount of **\$850/month**
 - During time in question, Respondent sought to rent property for **\$700/month**



Roy Hanover

- Issue #1 (Cont'd)
 - Respondent **refused to show Complainant property** because of her child with a disability
 - Current tenants of property had a child with disability



Roy Hanover

- Issue #1 (Cont'd)
 - ICRC: **Insufficient evidence** that Complainant was denied opportunity to rent
 - No evidence that Complainant was **qualified to rent** the property from Respondent or that less qualified individuals were permitted to rent the premises
 - **No reasonable cause**



Roy Hanover

- Issue #2
 - Complainant alleged that Respondent asked **what was "wrong" with her son**
 - After informing Respondent that he had a disability, Respondent stated, **"I don't think we should do this."**
 - Current resident asserted that Respondent made **degrading and discriminatory statements** about her son



Roy Hanover

- Issue #2 (Cont'd)
 - ICRC: Derogatory statements regarding children with disabilities **showed preference** for renters without children with disabilities
 - State law prohibits "publication, posting, or mailing of a notice, a statement, or an advertisement prohibited under Ind. Code § 22-9.5-5-2."
 - **Reasonable cause**



Pedcor Management

- **ICRC No. HOHA14090702**
- December 3, 2014
- Issue:
 - Reasonable accommodation denial?



Pedcor Management

- Policy – If resident wants to transfer to another unit, **must pay deposit**
- During tenancy, complainant developed condition – required reserved **parking space** and **first floor unit**



Pedcor Management

- Complainant made request; submitted supporting physician paperwork
- Respondent **provided reserved parking space and first floor unit**
- Respondent **refused to waive deposit**, per policy
- Did not enter into an **interactive dialogue** about waiving deposit



Pedcor Management

- ICRC: Complainant was requesting a RA to deposit policy
 - **Failure to waive** deposit fee **or enter into interactive dialogue** regarding deposit fee constituted a discriminatory practice
- **Reasonable cause**



Don Estes, Action Properties

- **ICRC No. HOHA13071317**
- October 28, 2013
- Issue:
 - Reasonable modification denial?



Don Estes, Action Properties

- Complainant lived month-to-month with no end date at unit **since 2009**
- Physical disability; worsened over time
- 3/13 – **requested permission** to install stair lift, handheld shower head, and handrail in garage
- Identified non-profit agency willing to **pay for** and **complete installation**



Don Estes, Action Properties

- 3/21/13 – Respondent **agreed to allow modification**
- Stipulation that Complainant make a **deposit of \$300** to restore property to original state when/if she vacated unit
- Complainant agreed to make **\$25 monthly installments**



Don Estes, Action Properties

- 3/27/13 – Respondent contacted Complainant's Section 8 caseworker and **requested a rent increase**
- Early 7/13 – Increase **request denied**
- Early 7/13 – Respondent provided Complainant a **30-day notice to vacate** her unit by 7/31/13



Don Estes, Action Properties

- Respondent alleged that per its procedures, **if Section 8 denies a rent request, policy was to evict tenant**
- Complainant was **unable to vacate** unit during time period and Respondent **filed for eviction**



Don Estes, Action Properties

- **ICRC:** Request for RM **unreasonably delayed** and **subsequently denied**
 - Rent increase request not until Complainant made RM request
 - Same rental rate, with no issue, since 4/12
 - Did not increase rent of other substantially similar dwellings
- **Reasonable cause**



Zender Family Limited Partnership

- **ICRC No. HOHA13041057**
- August 23, 2013
- Issue:
 - Reasonable accommodation denial?



Zender Family Limited Partnership

- Complainant had **one-year lease** ending in 12/12
- 4/12 – Complainant spoke with property manager; asked to be **released from lease without penalty** due to recent medical conditions
- Complainant **submitted physician documentation**



Zender Family Limited Partnership

- Respondent told Complainant **must pay \$250 termination fee plus two months rent**
 - Refused to offer alternatives or engage in interactive process
- Complainant paid rent through May, \$250 term fee, and two months rent



Zender Family Limited Partnership

- ICRC: While Respondent not obligated to grant Complainant's specific request, **refusal to engage in any dialogue** regarding request, including discussing alternatives, constituted violation
- Reasonable cause



Additional Resources

- **DOJ/HUD Joint Statement: Reasonable Modifications under the Fair Housing Act**
 - http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7502.pdf
- **DOJ/HUD Joint Statement: Reasonable Accommodations under the Fair Housing Act**
 - <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>



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